

**DEPARTMENT OF STATE REVENUE  
LETTER OF FINDINGS NUMBER: 03-0311P  
Tax Administration—Penalty  
Tax Administration—Interest  
For the Years 1999-2001**

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**ISSUES**

**I. Tax Administration—Penalty**

**Authority:** 45 IAC 15-11-2

Taxpayer protests the 10% negligence penalty.

**II. Tax Administration—Interest**

**Authority:** IC § 6-8.1-10-1; 45 IAC 15-11-1

Taxpayer protests the interest amount levied upon the base use tax owed to the Department.

**STATEMENT OF FACTS**

The penalty was proposed in the first instance because the auditor determined taxpayer had charged, remitted gross retail taxes on sales of windows, glass, and mirrors during the audit years at issue. Taxpayer argues she did not charge sales tax because she received misinformation from the Department.

Taxpayer does window replacements and repairs for residential and business customers in Indiana, Illinois, and Texas.

**I. Tax Administration-Penalty**

**DISCUSSION**

Penalty assessments depend on a number of factors outlined in the statute and regulation cited *supra*, and can be waived based on a showing of sufficient cause:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department finds the taxpayer did not act with reasonable care in that taxpayer did not charge, collect, and remit gross retail taxes on windows, glass, and mirrors sold to customers. Taxpayer did not remit the sales tax collected. Taxpayer alleges she was misinformed; however, taxpayer also admits she did not collect the taxes due on gross retail sales; that admission is an admission of negligence. The Department denies taxpayer's request to abate the 10% penalty assessment.

#### **FINDING**

Taxpayer's request to abate the 10% negligence penalty is denied.

#### **II. Tax Administration—Interest**

#### **DISCUSSION**

Interest is imposed by the statute cited *supra*, and cannot be waived.

#### **FINDING**

Taxpayer's request to abate the interest assessment is denied.